Supreme Court, U.S.
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No. 00-1803

In The

Supreme Court of the United States

JULI BROWN, et al.,

Petitioners,

v.

KNOX COUNTY, et al.,

Respondents.

On Petition For Writ Of Certiorari To The Court Of Appeals Of The State Of Tennessee

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

CAN STATE CLERICAL OFFICIALS INCREASE THE PUNISHMENT FOR A CRIMINAL OFFENSE FOR THOUSANDS OF INDIVIDUALS BEYOND THAT IMPOSED BY THE COURTS AND AUTHORIZED BY STATUTE?

LIST OF PARTIES

In the Tennessee Court of Appeals, the Appellant (Petitioner here) was Juli Brown. Juli Brown had sought to appear on her own behalf and on behalf of all others similarly situated by filing a motion for class certification in the trial court. The class Petitioner sought to certify consisted of all persons convicted of driving under the influence of an intoxicant in Knox County, Tennessee who had been charged more for fines and jail fees than the law allowed. The Chancery Court (the trial court in Tennessee) did not act upon the motion to certify this class prior to granting the Defendants' (Respondents here) Motion for Summary Judgment.

The Appellees (Respondents here) in the Tennessee Court of Appeals were the County of Knox in the State of Tennessee and Lillian Bean, the former Circuit Court and General Sessions Court Clerk for Knox County, Tennessee.

STATEMENT OF CORPORATE DISCLOSURE

Pursuant to Rule 29.6 of the Supreme Court Rules, Petitioner hereby asserts that no corporate disclosure statement is required.

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CITATIONS TO OPINIONS AND ORDERS BELOW

Petitioner filed suit against Respondents in the Chancery Court for Knox County, Tennessee on April 13, 1995. (Compl., App. at 19). After the Chancery Court for Knox County, Tennessee granted summary judgment against the Petitioner in this case (Ch. Ct. Mem. Op., App. at 13), the Petitioner appealed to the Tennessee Court of Appeals. The decision of that court was filed on August 25, 2000, as *Brown v. Knox County*. This opinion is included in the appendix to this Petition (Tenn. Ct. App. Op. & J., App. at 1) and is published at 39 S.W.3d 585 (Tenn. Ct. App. 2000).

The Petitioner sought permission to appeal in the Tennessee Supreme Court, pursuant to its discretionary review authority under Rule 11 of the Tennessee Rules of Appellate Procedure. The Tennessee Supreme Court denied the Application for Permission to Appeal on March 5, 2001. The order denying the Application is included in the appendix to this Petition (Tenn. Sup. Ct. Order, App. at 18) and is published as a file line to the opinion at 39 S.W.3d 585 (Tenn. Ct. App. 2000).

STATEMENT OF JURISDICTION

This Court's jurisdiction is based upon Supreme Court Rule 10(c). The Tennessee Court of Appeals in this case decided an important issue of federal constitutional law in a way that is repugnant to the constitution and laws of the United States. A review of that state appellate court decision was denied by the Tennessee Supreme Court, the state court of last resort, on March 5, 2001.

Therefore, pursuant to 28 U.S.C. § 1257, this Court has jurisdiction to review this matter on a writ of certiorari.

This Petition for Certiorari seeking review from the state supreme court's denial of permission to appeal is filed within ninety days after the Tennessee Supreme Court entered their order denying discretionary review pursuant to Supreme Court Rule 13.1.

No notifications are required by Supreme Court Rules 29.4(b) or (c).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. V.

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. amend. XIV, § 1.

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or

enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. § 1983 (Supp. 2000).

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Tenn. Code Ann. § 55-10-403(a)(1) (1998 & Supp. 2000).

Any person or persons violating the provisions of §§ 55-10-401 – 55-10-404 shall, upon conviction thereof, for the first offense be fined not less than three hundred fifty dollars ($350) nor more than one thousand five hundred dollars ($1,500), and such person or persons shall be confined in the County jail or workhouse for not less than forty-eight (48) hours nor more than

eleven (11) months and twenty-nine (29) days; and the court shall prohibit such convicted person from driving a vehicle in the state of Tennessee for a period of time of one (1) year. In addition to the other penalties set out for a first offense violation, if at the time of such offense the alcohol concentration in such person's blood or breath is twenty hundredths of one percent (.20%) or more, the minimum period of confinement for such person shall be seven (7) consecutive calendar days rather than forty-eight (48) hours. The provisions of this section constitute an enhanced sentence, not a new offense. For conviction on the second offense, there shall be imposed a fine of not less than six hundred dollars ($600) nor more than three thousand five hundred dollars ($3,500), and the person or persons shall be confined in the County jail or workhouse for not less than forty-five (45) days nor more than eleven (11) months and twenty-nine (29) days, and the court shall prohibit such convicted person or persons from driving a vehicle in the state of Tennessee for a period of time of two (2) years. Upon the conviction of a person on the second offense only, a judge may sentence such person to participate in a court approved inpatient alcohol or drug treatment program pursuant to subdivision (a)(4). For the third conviction, there shall be imposed a fine of not less than one thousand one hundred dollars ($1,100) nor more than ten thousand dollars ($10,000), and the person or persons shall be confined in the County jail or workhouse for not less than one hundred twenty (120) days nor more than eleven (11) months and twenty-nine (29) days, and the court shall prohibit such convicted person or persons from driving a vehicle

in the state of Tennessee for a period of time of not less than three (3) years nor more than ten (10) years. Notwithstanding any other provision of law to the contrary, the fourth or subsequent conviction shall be a Class E felony punishable by a fine of not less than three thousand dollars ($3,000) nor more than fifteen thousand dollars ($15,000); by confinement for not less than one hundred fifty (150) consecutive days, to be served day for day, nor more than the maximum punishment authorized for the appropriate range of a Class E felony; and the court shall prohibit the person from driving a motor vehicle for a period of five (5) years. For the provisions of the preceding sentence to apply, at least one (1) of the violations of § 55-10-401 must occur on or after July 1, 1998. After service of at least the minimum sentence day for day, the judge has the discretion to require an individual convicted of a violation of the provisions of §§ 55-10-401 – 55-10-404 to remove litter from the state highway system, public playgrounds, public parks or other appropriate locations for any prescribed period or to work in a recycling center or other appropriate location for any prescribed period of time in lieu of or in addition to any of the penalties otherwise provided in this section; provided, that any person sentenced to remove litter from the state highway system, public playgrounds, public parks or other appropriate locations or to work in a recycling center shall be allowed to do so at a time other than such person's regular hours of employment.

Tenn. Code Ann. § 55-10-403(a)(2) (1998 & Supp. 2000).

> A portion of any fine imposed upon a person for a violation of this section, up to the maximum fine actually imposed, shall be returned to the sheriff of a County jail or to the chief administrative officer of a city jail for the purpose of reimbursing such sheriff or officer for the cost of incarcerating such person for each night such person is actually in custody for a violation of this section. Such reimbursement shall be in the same amount as is provided by § 8-26-105, and shall not in any event be less than the actual cost of maintaining such person and shall be reimbursed in the manner provided by § 8-26-106.

Tenn. Code Ann. § 8-26-105 (1993).

> (a) The County legislative body or governing body of each County has the authority to pass a resolution fixing the amount of jailers' fees which may be applied to misdemeanant prisoners. The rate fixed shall apply to such prisoners confined in the County jail or County workhouse or workhouses, but not meeting the conditions required for a state subsidy under title 41, chapter 8.
>
> (b) In lieu of the reimbursement for jailers' fees allowed in § 8-26-106, the state shall provide a subsidy pursuant to title 41, chapter 8.
>
> (c) References in other sections to jailers' fees for state prisoners specified in this section shall be deemed to be references to the subsidies specified in § 41-8-106(d).

Tenn. Code Ann. § 8-26-106 (1993).

> Upon the adoption by the County legislative body of a resolution fixing jailers' fees, it is

made the duty of the County clerk to promptly transmit to the judicial cost accountant a certified copy of the resolution. The judicial cost accountant shall allow jailers' fees for that particular County for state prisoners at the amount fixed by the resolution on the same terms as the County according to the provisions of § 8-26-105.

STATEMENT OF THE CASE

Petitioner and those she seeks to represent are individuals who have been found guilty of the offense of driving under the influence of an intoxicant in the state of Tennessee. By statute, each of the individuals is sentenced to a mandatory minimum term of incarceration, a mandatory fine, and a period of probation. Tenn. Code Ann. § 55-10-403(a)(1) (1998 & Supp. 2000). While the conviction may form the basis for a subsequent enhanced penalty, should the offender reoffend, once the offender satisfies these statutorily prescribed penalties, his or her punishment for the offense is complete.

Tennessee Code Annotated Section 55-10-403(a)(2) provides that "[a] portion of any fine imposed upon a person for a violation of this section, up to the maximum fine actually imposed, shall be returned to the sheriff of a County jail or the chief administrative officer of a city jail for the purpose of reimbursing such sheriff or officer for the cost of incarcerating such person for each night such person is actually in custody for a violation of this section." The statute further provides that the reimbursement is to be in the same amount as provided by the

general jail fees statute, Tennessee Code Annotated Section 8-26-105, and is to be no less than the actual cost of maintaining the offender in accordance with Tennessee Code Annotated Section 8-26-106.

After the statute was passed, a state representative sought an interpretation of the provision from the Tennessee Attorney General's Office, pursuant to Tennessee Code Annotated Section 8-6-109(b)(6). After reviewing the general rules of statutory construction, the Tennessee Attorney General's Office concluded:

> Since this statute states that the reimbursement to the sheriff or officer must come from "a portion of any fine imposed," it is clear that the legislature did not intend that a separate jail fee be charged. Consequently, based upon the natural and ordinary language of the statute, **the jail fee must be paid by the clerk from the fine imposed by the clerk**.

Tenn. Op. Att'y Gen. U96-071 (1996) (emphasis added) (*see* App. at 40).

Notwithstanding this clear and authoritative interpretation of the statute, the respondent Clerk has refused to credit the fine to the jail fees and has caused the incarceration of some who have been unable to pay the extra moneys under the auspices of a warrant for violation of probation. (*See State v. Smith* Warrant & Probation Violation Order, App. at 43). The result is that the Clerk of the Court persists in a pattern of incarcerating or threatening to incarcerate offenders for their inability to pay moneys not authorized as part of the punishment for their offense. Such an interpretation is not only unconstitutional, but also financially self-rewarding to the

respondents. This is an ongoing violation of the United States Constitution which affects thousands of persons each year.

Petitioner and the class she seeks to represent in this case first sought relief from this unconstitutional practice by filing a lawsuit in the United States District Court for the Eastern District of Tennessee. That lawsuit raised the federal question which forms the basis for this Petition and sought relief from the unconstitutional practice. After denying a request for a temporary restraining order, the district court dismissed the complaint on a jurisdictional theory that had not been raised or briefed by the parties.[1] The Sixth Circuit Court of Appeals upheld the dismissal.[2]

The Petitioner, thereafter, filed suit in the state court raising the same issues and requesting state court relief based upon state and federal law. The Chancery Court ruled against the Petitioner based upon the Respondent's Motion for Summary Judgment.

The state court opinion granting summary judgment neither addressed nor analyzed the substance of

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[1] The United States District Court for the Eastern District of Tennessee at Knoxville in *Brown v. Tidwell*, Civil Action No. 3:97-CV-145, held that, "the Tennessee courts retain jurisdiction over proceedings seeking further compliance with their orders and procedures." The district court relied upon the *Younger* abstention doctrine for this ruling. *Younger v. Harris*, 401 U.S. 37 (1971).

[2] The United States Court of Appeals for the Sixth Circuit in *Brown v. Tidwell*, 169 F.3d 330 (6th Cir. 1999), held that the *Younger* abstention doctrine did not apply, and relied instead upon the *Pullman* abstention doctrine, which again was neither raised nor briefed by the parties. *Railroad Comm'n v. Pullman Co.*, 312 U.S. 496 (1941).

Petitioner's claims. Rather, the court relied upon an unpublished Tennessee appellate opinion, *Knox County v. City of Knoxville*, 1988 WL 116456 (Tenn. Ct. App. Nov. 2, 1988) (*see* App. at 32). That opinion, included in the appendix, was issued eight years prior to the Attorney General's opinion. While it purported to resolve the issue of the interpretation of the statute, it failed to consider the constitutional issues that the application of the statute raises, nor did it consider the issue of a violation of the federal Civil Rights Act. In fact, those issues were never raised because the offenders whose rights were and are being violated were not parties to that action.

ARGUMENT

THE RESPONDENTS ARE ENGAGED IN AN ONGOING, FINANCIALLY SELF-SERVING COURSE OF CONDUCT WHICH UNCONSTITUTIONALLY INCREASES THE PENALTY FOR DRUNK DRIVING CONVICTIONS. THIS CONDUCT VIOLATES 42 U.S.C. § 1983 BY DEPRIVING, UNDER COLOR OF LAW, PETITIONER AND THE CLASS SHE SEEKS TO REPRESENT OF THEIR CONSTITUTIONAL RIGHT TO DUE PROCESS.

The principles of criminal law which form the bases for the petitioner's claim are perhaps its most basic premises. Based upon a universally accepted notion of fair play, two basic premises are central to all of Anglo-American criminal law. The first is that a person who has engaged in criminal conduct may only be subjected to the legally prescribed punishment for that criminal conduct. *Smith v. Goguen*, 415 U.S. 566, 574 (1974). The second

equally significant principle is that conduct is not criminal unless it is forbidden by law that gives some advance warning that the conduct is criminal. The notice requirement is equally applicable to the level of punishment. When combined, the two basic premises mean that the public is entitled to some advance warning as to what is criminal and how it is punishable. *See, e.g., United States v. R.L.C.*, 503 U.S. 291 (1992).

This basic precept of the criminal law is commonly called the "principle of legality" and is often referred to by the Latin maxim – *nullum crimin sine lege, nulla poena sine lege* – which translates simply into "no crime or punishment without law." The principle of legality is reflected in many ways – the ex post facto prohibition, the rule requiring strict construction of criminal statutes, the void-for-vagueness doctrine, and the trend away from open-ended common law crimes. For the most part, courts have used the due process clause to enforce these fundamental rights which scholars credit as instrumental to the development of criminal law. *See generally* Wayne R. LaFave, *Criminal Law* § 1.2 (3d ed. 2000); Jerome Hall, *General Principles of Criminal Law* 27-28 (2d ed. 1960).

Justice Holmes, in commenting on the importance of fair, advanced notice of crime and punishment, stated:

> Although it is not likely that a criminal will carefully consider the text of the law before he murders or steals, it is reasonable that a fair warning should be given to the world in language that the common world will understand, of what the law intends to do if a certain line is passed. To make the warning fair, so far as possible the line should be clear.

McBoyle v. United States, 283 U.S. 25, 27 (1931) (expounding specifically upon the void for vagueness doctrine).

The due process fairness requirement necessarily includes the component of definiteness. While courts will analyze criminal statutes based upon plain meaning and legislative intent, as they do with non-criminal statutes, one essential difference in statutory interpretation of criminal laws exists: criminal statutes must be strictly construed in favor of the accused criminal. As this Court has expressed it, "ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity." *Rewis v. United States*, 401 U.S. 808, 812 (1971). Stated less diplomatically, "criminals should be given fair warning, before they engage in a course of conduct, as to what conduct is punishable and how severe the punishment is."[3]

As the ultimate assertion of its exclusive power and its constitutional duty, the Tennessee General Assembly has declared, " [c]onduct does not constitute an offense unless it is defined as an offense by statute, municipal ordinance, or rule authorized by and lawfully adopted under a statute." Tenn. Code Ann. § 39-11-102 (1997). Only with clearly defined crimes and punishments determined by the legislature could they achieve the codified objectives of the criminal code:

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[3] LaFave, *supra*, § 2.2, at 83 (citing Reed Dickerson, *The Interpretation and Application of Statutes* 209 (1975)); *see also Lankford v. Idaho*, 500 U.S. 110 (1991) (holding that defendant's due process rights were violated when, at the time of the sentencing hearing, defendant and his counsel were not given adequate notice that defendant could be sentenced to death).

> The general objectives of the criminal code are to:
>
> . . .
>
> (2) Give fair warning of what conduct is prohibited . . .
>
> (3) Give fair warning of the consequences of violation . . . ; and
>
> (4) Prescribe penalties that are proportionate. . . .

Tenn. Code Ann. § 39-11-101 (1997).

Petitioner and the class she seeks to represent have been subjected to punishment of which they had no fair, advance notice. They were punished beyond that which the legislature provided in the applicable criminal statute and beyond that which the court provided in the judgment. This punishment was extracted at the whim of the clerk of the court despite contrary statutory obligations.

The Tennessee legislature has set forth in the applicable statute both mandatory minimum and maximum periods of incarceration and fines for driving while intoxicated.[4] Petitioner has never disputed that the sentencing court acted within the law in imposing fines and fees. The respondents simply ignored the requirement in the law to reduce the jail fees by the amount of the fine.

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[4] For example, a first offense DUI in Tennessee carries a minimum period of incarceration of 48 hours and a maximum period of incarceration of eleven months, twenty-nine days; the fine for a first offense DUI ranges from $350.00 to $1,500.00. *See* Tenn. Code Ann. § 55-10-403(a)(1), *supra* at 3.

For instance, if the fine imposed upon a DUI offender is $350.00 and the jail fees for the offender are $50.00, then the clerk should reduce the amount collected for the fine by the amount of the jail fees the offender has paid. Therefore, under this scenario, the offender should pay a total of $350.00 – a $300.00 fine plus $50.00 for jail fees.

Instead, using this example, the clerk is charging the full amount of the $350.00 fine, plus the $50.00 jail fee, totaling $400.00. By charging offenders these additional moneys, and having them arrested for violation of probation when they do not pay these additional moneys, the clerk of the court is expanding the punishment beyond (1) that of which the offenders have fair, advance warning; (2) that which the legislature has proscribed; and (3) that which the court has ordered.

In his characteristic vigor, Justice Hugo L. Black expressed his view of indefinite, undefined penal acts:

> Experience, and wisdom flowing out of that experience, long ago led to the belief that agents of government should not be vested with power and discretion to define and punish as criminal past conduct which had not been clearly defined as a crime in advance. To this end, at least in part, written laws came into being, marking the boundaries of conduct for which public agents could thereafter impose punishment upon people. In contrast, bad governments either wrote no general rules of conduct at all, leaving that highly important task to the unbridled discretion of government agents at the moment of trial, or sometimes, history tells us, wrote their laws in an unknown tongue so that people could not understand them or else placed their written

> laws at such inaccessible spots that people could not read them.

Ginzburg v. United States, 383 U.S. 463, 477 (1966) (Black, J., dissenting) (proposition not controverted by the majority).

Far worse than what Justice Black feared is the reality of what petitioner and the class she seeks to represent have experienced. The government of the State of Tennessee has defined criminal conduct and punishment, petitioner has relied upon it, and courts have relied upon it. Yet, public agents have modified the law, enlarged the penalties, and, perhaps, most problematic, benefitted financially from such acts.

The clerk's conduct in this case resulted in a deprivation of petitioner's, and all potential class members, rights under the United States Constitution. Those potential class members who were arrested when they could not pay these extra moneys were deprived of their liberty without due process of law. Those who did pay the unlawful assessments were deprived of their property without due process of law.

In *Lambert v. People*, this Court examined a California statute which, among other things, made it a crime for a person convicted of criminal activity to fail to register within five days of arriving in the area, and in reviewing the concept of notice, the Court stated the following:

> Engrained in our concept of due process is the requirement of notice. Notice is sometimes essential so that the citizen has the chance to defend charges. Notice is required before property interests are disturbed, before assessments are made, before penalties are assessed. Notice is required in a myriad of situations where a

> penalty or forfeiture might be suffered for mere failure to act. . . . [T]he principle is . . . appropriate where a person, wholly passive and unaware of any wrong-doing, is brought to the bar of justice for condemnation in a criminal case.

Lambert v. People, 355 U.S. 225, 228 (1957). Though this Court was addressing specifically the circumstances surrounding punishment imposed for the failure to act, the principles it expounds are no less applicable to the case at bar. Particularly troublesome to the Court was the "absence of an opportunity either to avoid the consequences of the law or to defend [against it]." *Id.* at 229. So, too, petitioner and the class she seeks to represent were unaware of any consequences beyond those placed upon them by the law and the judge, and they had no opportunity to challenge the clerks' self-serving assessments. Particularly, those petitioners who were arrested for failure to pay the additional moneys find themselves in precisely the same position as the defendant in *Lambert:* "appellant on first becoming aware of her duty . . . was given no opportunity to comply with the law and avoid its penalty, even though her default was entirely innocent." *Id.*

By dismissing this case on respondent's motion for summary judgment, the Knox County, Tennessee Chancery Court denied petitioner the opportunity to litigate a cognizable claim under 42 U.S.C. § 1983. That court's opinion, upheld by the Tennessee Court of Appeals and allowed to stand by the Tennessee Supreme Court, is a gross departure from well-established federal constitutional law. In its current state, the Tennessee Supreme

Court has now made this ongoing and pervasive unconstitutional practice the law of the land in all ninety-five Tennessee counties.

CONCLUSION

For these reasons, petitioner and the class she seeks to represent respectfully urge this Court to grant this Petition for Certiorari, and upon hearing, remand this case to the Chancery Court for the State of Tennessee for a hearing on the merits of the federal civil rights claim under 42 U.S.C. § 1983.

Respectfully submitted,

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APPENDIX

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IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

May 2000 Session

JULI BROWN, ET AL. V. KNOX COUNTY, ET AL.

**Appeal from the Chancery Court for Knox County
No. 142569-2 William H. Inman, Senior Judge,
By Designation**

No. E1999-01185-COA-R3-CV

(Filed Aug. 25, 2000)

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which HOUSTON M. GODDARD, P.J., and HERSCHEL P. FRANKS, J., joined.

A. James Andrews and Steven Oberman, Knoxville, Tennessee, for the appellant Juli Brown.

Richard T. Beeler, Knox County Law Director; John E. Owings, Chief Deputy Law Director; and Robert R. Davies, Knoxville, Tennessee, for the appellees Knox County and Lillian Bean.

OPINION

I.

In this suit, the plaintiff seeks class action certification on behalf of all individuals who have been convicted of the offense of DUI in Knox County and who have been "assessed and/or paid" both a fine and jail fees "and [h]ave not had their jail fees reduced by the fine, up to

and including the total amount of the fine, where applicable."[1] The plaintiff's complaint alleges, *inter alia*,[2] that Knox County and the former Knox County Circuit Court Clerk, Lillian Bean – who is sued individually and in her former official capacity – have assessed and collected jail fees in violation of T.C.A. § 55-10-403(a)(2). The trial court granted the defendants summary judgment. In doing so, it relied upon an unpublished opinion of this Court. *Knox County v. City of Knoxville*, C/A No. 759, 1988 WL 116456 (Tenn. Ct. App. W.S., filed in Knoxville on November 2, 1988). In that case, we concluded that "a DUI offender must pay both the jailer's fee and the fine for drunk driving in its entirety." *Id.* at *2.

The plaintiff appeals, arguing that the trial court and this Court in the *Knox County* case erred when we interpreted T.C.A. § 55-10-403(a)(2). She presents one issue for our consideration:

> Whether the chancery court erroneously interpreted T.C.A. § 55-10-403(a)(2) when it disagreed with a Tennessee Attorney General's opinion holding that this statute requires clerks of court to reduce jail fees imposed on persons convicted of violating Tennessee's DUI statute by the amount of any fine imposed.

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[1] The plaintiff does not challenge the assessment of court costs.

[2] The complaint also alleges deprivation of property without due process of law and under color of law in violation of the Fifth and Fourteenth Amendments to the United States Constitution and Article 1, Section 8 of the Tennessee Constitution. These aspects of the complaint are not at issue on the instant appeal.

Since the material facts in this case are undisputed, our review focuses on the interpretation and application of various statutes. Thus, we are presented with a pure question of law. Our review is *de novo* on the record of the proceedings below, but there is no presumption of correctness as to the trial court's ruling. *Billington v. Crowder*, 553 S.W.2d 590, 595 (Tenn. Ct. App. 1977); *Myint v. Allstate Ins. Co.*, 970 S.W.2d 920, 924 (Tenn. 1998) ("Construction of a statute is a question of law which we review *de novo*, with no presumption of correctness.")

II.

T.C.A. § 55-10-403(a)(2) (1998) is a part of the present comprehensive DUI statutory scheme which was first enacted by the General Assembly in 1982.[3] It provides as follows:

> A portion of any fine imposed upon a person for a violation of this section, up to the maximum fine actually imposed, shall be returned to the sheriff of a county jail or to the chief administrative officer of a city jail for the purpose of reimbursing such sheriff or officer for the cost of incarcerating such person for each night such person is actually in custody for a violation of this section. Such reimbursement shall be in the same amount as is provided by § 8-26-105, and shall not in any event be less than the actual cost of maintaining such person and shall be reimbursed in the manner provided by § 8-26-106.

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[3] *See* 1982 Tenn. Pub. Acts ch. 891. While the statutory scheme has been modified several times since then, none of the amendments impact our decision in this case.

The plaintiff contends that this part of the Code means that *all* jail fees[4] for DUI defendants, up to the amount of the fine, must be paid by the clerk out of the fine and not separately assessed against a DUI defendant.[5] She argues that "there is no lawful authority allowing a clerk of court to impose a separate jail fee for DUI convictions unless the fee exceeds the amount of the fine imposed."

The plaintiff relies upon an opinion of the State Attorney General interpreting T.C.A. § 55-10-403(a)(2). The Attorney General responded to the following question – "must the jail fee be paid by the clerk from the fine which is imposed by the court or may it be charged separately as part of the cost of the action?" *See Op. Att'y Gen.* No. U96-071 (1996). The Attorney General opined that

> [s]ince this statute states that the reimbursement to the sheriff or officer must come from 'a portion of any fine imposed', it is clear that the legislature did not intend that a separate jail fee be charged. Consequently, based upon the natural and ordinary language of the statute, the jail fee must be paid by the clerk from the fine imposed by the clerk.

Id. at 2.

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[4] Under the authority of T.C.A. § 8-26-105 (1993), the Knox County Commission has authorized the Sheriff of Knox County to charge a daily jail fee of $38.50.

[5] The plaintiff concedes that DUI defendants can be assessed jail fees to the extent that the total jail fees exceed the amount of the fine.

III.

In 1988, prior to the Attorney General's opinion, this Court decided the case of *Knox County v. City of Knoxville, supra.* The opinion in that case focuses on the interplay of two statutes: (1) the DUI statute at issue in the instant case, T.C.A. § 55-10-403(a)(2) (Supp. 1988); and (2) the general jailer's statute. T.C.A. § 8-26-105 (Supp. 1987).[6] *Id.* at *1. The action was brought by Knox County, seeking reimbursement of jail fees pursuant to T.C.A. § 55-10-403(a)(2) even in cases where it had collected those fees from the offenders pursuant to the general jailer's statute. *Knox County* at *1-*2. In resolving that appeal, we specifically addressed the question of "[w]hether DUI offenders must pay the jailer's fee pursuant to T.C.A. § 8-26-104[7] in addition to the fine for DUI

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[6] The two statutes at issue in *Knox County* are substantially the same today as they were when that case was decided.

[7] The Court apparently meant to refer to T.C.A. § 8-26-105 or -106. Those statutes provide as follows:

T.C.A. § 8-26-105

(a) The county legislative body or governing body of each county has the authority to pass a resolution fixing the amount of jailers' fees which may be applied to misdemeanant prisoners. The rate fixed shall apply to such prisoners confined in the county jail or county workhouse or workhouses, but not meeting the conditions required for a state subsidy under title 41, chapter 8.

(b) In lieu of the reimbursement for jailers' fees allowed in § 8-26-106, the state shall provide a subsidy pursuant to title 41, chapter 8.

(c) References in other sections to jailers' fees for state prisoners specified in this section shall be deemed to

pursuant to T.C.A. § 55-10-403." *Id.* at *2. In holding that DUI offenders must pay both the jail fees and the fine, we stated the following:

> The question presented by the parties on appeal is whether T.C.A. § 55-10-403(a)(2) requires that the County Sheriff be paid, out of fines collected from persons convicted of DUI, a per diem incarceration cost (i.e., a jailer's fee) irrespective of whether or not that same cost is recovered or collected from another source authorized by T.C.A. § 8-26-105 as amended by Chapter 896, Section 7, of the 1984 Public Acts of Tennessee. In addressing this question, two issues must be resolved [, the first of which is directly pertinent to the instant case]:
>
> (1) Whether DUI offenders must pay the jailer's fee pursuant to T.C.A. § 8-26-104[8] in addition to the fine for drunk driving pursuant to T.C.A. § 55-10-403;
>
> * * *

---

be references to the subsidies specified in § 41-8-106(d).

T.C.A. § 8-26-106

Upon the adoption by the county legislative body of a resolution fixing jailers' fees, it is made the duty of the county clerk to promptly transmit to the judicial cost accountant a certified copy of the resolution. The judicial cost accountant shall allow jailers' fees for that particular county for state prisoners at the amount fixed by the resolution on the same terms as the county according to the provisions of § 8-26-105.

[8] See footnote 7.

. . . As to the first issue, a DUI offender must pay both the jailer's fee and the fine for drunk driving in its entirety. There are several reasons why this must be the result. As a general rule, statutes on the same subject must be read *in pari materia*. The court is required to interpret such statutes in a manner which avoids conflict between them and should strive to interpret the statutes "so as to provide a harmonious operation of the laws." The two statutes at issue do not conflict when the DUI statute requiring reimbursement is read as an alternative means for counties to recover the costs of incarceration. This allows for a harmonious operation of statutes.

In addition, it must be presumed that the Legislature was aware of the jailer's fee, T.C.A. § 8-26-104 when it passed the DUI statute. This is especially true when, as with the statutes at issue, the new statute specifically refers to the prior statute. The Legislature specifically noted the existence of the jailer's fee statute in the DUI statute. The DUI statute does not purport to exempt DUI offenders from the payment of jailer's fees, rather it refers to the general jailer's statute for the method of determining the amount of reimbursement. Thus, it is clear that the legislative intent was that DUI offenders pay both the jailer's fee and the fine for DUI.

Finally, a fundamental purpose of statutory construction "is to ascertain and, if possible, give effect to the intention or purpose of the legislature." An interpretation which frustrates that purpose is impermissible. T.C.A. § 55-10-401 *et seq.* sets forth a comprehensive plan dealing with drunk driving. Clearly, the

> purpose of this law is to punish intoxicated drivers and deter such conduct in the future. The main goal of the statute is to penalize intoxicated drivers, not to provide reimbursement of incarceration costs. Allowing DUI offenders to avoid the jailers' fees charged to other misdemeanants would certainly detract from the penal nature of the statute and frustrate the purpose of the legislative scheme. Thus, a DUI offender must pay both the jailer's fee and the DUI fine.

Id. at *2-*3. (Citations omitted). As can be seen, we concluded in *Knox County* that DUI offenders must pay both jail fees pursuant to T.C.A. §§ 8-26-105 and -106 and DUI fines pursuant to T.C.A. § 55-10-403.

In dismissing the instant complaint, the trial court specifically relied upon our decision in *Knox County*, stating that "[i]f the plaintiff's interpretation of T.C.A. § 55-10-403(a)(2) is correct, DUI defendants – and they only – are the beneficiaries of a substantial benefit: the mandated fine includes the nightly cost of their incarceration, up to the amount of the fine." The trial court recognized that no DUI offenders were involved in the *Knox County* case, but felt constrained to follow the holding of that case.

It is important to recognize that T.C.A. § 55-10-403(a)(2) does not *expressly* state that a DUI defendant cannot be assessed with jail fees. The plaintiff seizes upon some of the language of that statute to support her argument with respect to jail fees; however, in the absence of an express declaration of non-liability, she necessarily must argue that this language *impliedly* absolves a DUI defendant of all jail fees up to the full

amount of the fine. The problem with this approach is that it focuses only on a portion of the relevant statutory DUI scheme and, in addition, completely ignores the statutes pertaining to the jailer's fees, statutes that are expressly referred to in T.C.A. § 55-10-403(a)(2). This approach is inconsistent with recognized standards of statutory construction. *See Mandela v. Campbell*, 978 S.W.2d 531, 534 (Tenn. 1998); *Westinghouse Elec. Corp. v. King*, 678 S.W.2d 19, 23 (Tenn. 1984).

The 1996 Attorney General's opinion does not refer to the *Knox County* case, which was decided in 1988. While opinions of the Attorney General rendered pursuant to T.C.A. § 8-6-109(b) (1993) are frequently persuasive on a given subject, we are not inclined to follow his opinion regarding the effect of T.C.A. § 55-10-403(a)(2) on the facts of this case, especially in view of his failure to address the impact of *Knox County*.

In her reply brief, the plaintiff argues that since jail fees are an element of the costs of a prosecution, *see* T.C.A. § 40-25-133, and since the first monies paid by a defendant to a clerk must be applied to costs, *see* T.C.A. § 40-25-105(a), the trial court's interpretation of T.C.A. § 55-10-403(a)(2) as an *alternative* source for payment of jail fees does not make sense in the overall context of the language of the statute. The plaintiff contends that if the trial court is correct that the statute provides an alternative source for payment of the jail fees, such an interpretation presents an anomaly – the fine, being paid only after the jail fees have been paid in full, is an alternative source of payment for that which has already necessarily been paid. In other words, the clerk does not come into possession of the fine until all costs, including jail fees,

have been paid in full. In view of this, so the plaintiff questions, how can the fine be an alternative source of payment of the jail fees?

While the plaintiff's argument is based on a logical foundation, we again note that it focuses only on some of the language of T.C.A. § 55-10-403(a)(2) to the exclusion of other pertinent statutes. We reject this piecemeal approach to statutory construction. In the absence of an *express* declaration that DUI defendants are not obligated to pay jail fees, we cannot accept the plaintiff's argument.

We find that the trial court was correct in relying upon the rationale of *Knox County.* regardless of the fact that no DUI offenders were before the Court in that case. The plaintiff in *Knox County* was attempting to collect jail fees twice, once under the jailer's fee statute and once under the same DUI statute that is at issue in the instant case. Therefore, a resolution of the matter by the *Knox County* Court demanded an analysis of the interaction of the two statutes, which in turn required an interpretation of each statute. We concluded in *Knox County* that DUI offenders must pay both the jail fees pursuant to T.C.A. §§ 8-26-105 and -106 in addition to the fine for drunk driving pursuant to T.C.A. § 55-10-403. Therefore, the above-quoted portion of *Knox County* was essential to the holding of the case and, hence, not dicta. Though *Knox County* is an unpublished opinion, we may consider such opinions as persuasive authority. *See Allstate Ins. Co. v. Watts,* 811 S.W.2d 883, 886 n. 2 (Tenn. 1991) (citing an unpublished case despite "the general rule that unpublished opinions should not be cited in published opinions."). We consider *Knox County* to be well-reasoned, and we follow that precedent in this case.

The plaintiff's argument, in essence, is that the DUI statute impliedly repealed the general jailer's statute as it relates to DUI offenders by carving out an exception for such misdemeanants, exempting them from having to pay jail fees unless the fine is insufficient to cover those fees. We do not agree. A repeal by implication is disfavored, "and will be recognized only when no fair and reasonable construction will permit the statutes to stand together." *Cronin v. Howe*, 906 S.W.2d 910, 912 (Tenn. 1995). We found in *Knox County* that T.C.A. § 55-10-403(a)(2) and T.C.A. § 8-26-105 can be construed harmoniously and we reaffirm that holding today. Accordingly, we find and hold that the trial court did not err in its construction of T.C.A. § 55-10-403(a)(2).

IV.

The judgment of the trial court is affirmed. The case is remanded for collection of costs, assessed below, pursuant to applicable law. Costs on appeal are taxed to the appellant.

/s/ Charles D. Susano, Jr.
CHARLES D. SUSANO, JR.,
JUDGE

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
May 2000 Session

JULI BROWN, ET AL. V. KNOX COUNTY, ET AL.

Chancery Court for Knox County
No. 142569-2

No. E1999-01185-COA-R3-CV

JUDGMENT
FILED AUG 25 2000

This appeal came on to be heard upon the record from the Chancery Court of Knox County and briefs filed on behalf of the respective parties. Upon consideration thereof, this Court is of the opinion that there is no reversible error in the trial court's judgment.

It is therefore, ORDERED and ADJUDGED by this Court that the judgment of the trial court is affirmed. Costs on appeal are assessed to the appellant, Juli Brown, and her surety. This case is remanded for collection of costs assessed below, pursuant to applicable law.

PER CURIAM

IN THE CHANCERY COURT
FOR KNOX COUNTY, TENNESSEE

JULI BROWN, on behalf herself and all others similarly situated, Plaintiff	Knox Chancery
vs.	NO. 142569-2
KNOX COUNTY and LILLIAN BEAN, individually and in her former official capacity as clerk of court. Defendants	

MEMORANDUM OPINION
FILED 99 OCT 4

T.C.A. § 55-10-403 is a comprehensive DUI statute, It provides, *inter alia*, that a portion of any fine imposed for DUI should be returned to the sheriff for the purpose of reimbursing him for the cost of incarcerating the person involved.

In Knox County, the cost of incarceration, i.e. jail fees, is $38.50 per night as ordained by the County Commission. This per diem cost is levied *against all misdemeanant* offenders in addition to the mandated fine.

The plaintiff Brown pleaded guilty to a DUI charge on February 15, 1996. She was represented by counsel, advised of her rights, and paid the fine, costs, and jail fees on February 15, 1996 without objection or recourse to the Court.

The Clerk did not deduct jail fees from the fine when assessing the aggregate amount owed by the plaintiff, a DUI offender.

This action was filed April 13, 1999, on behalf of the plaintiff and others similarly situated, seeking (1) an award of compensation "in the amount collected from them in excess of the amount authorized by T.C.A. § 55-10-403(a)(2);" (2) interest on all such amounts; (3) costs and attorney fees;(4) additional compensation of $50.00 for the alleged overcharge; (5) Declaratory and injunctive relief.

The causes of action asserted by the plaintiff are (1) deprivation of property without due process contrary to the 5th and 14th amendments to the U. S. Constitution, Article I, Section 8 of the Tennessee Constitution, and 42 U.S.C. 1983; (2) violations of T.C.A. § 55-10-403(a)(2) for exacting a jail fee and collecting a fine without deducting the former from the latter.

The plaintiff seeks class certification pursuant to Rule 23, alleging that many thousands of persons are similarly situated, and that the undisputed facts justify class certification under well known principles.

The defendants moved for summary judgment, insisting that (1) as to the asserted 1983 violation, the complaint does not allege facts giving rise to any constitutionally protected right; (2) the fine and jail fee paid by the plaintiff did not contravene the statute according to established judicial precedent, *Knox County v. City of Knoxville*, 1988 WL 116454 (Tenn. Ct. App. 1988); (3) the plaintiffs' claims for monetary damages based on a state officer's violations of the Tennessee Constitution are

not cognizable; (4) the defendant Bean is shielded by qualified immunity; (5) the Chancery Court is without jurisdiction in light of T.C.A. § 8-21-103 which provides that if any officer demands or receives any other or higher fees than are prescribed by law, such officer is liable to the party aggrieved in the penalty of $50.00 to be recovered before any judge of the Court of General Sessions; (6) the action is barred by the statute of limitations of one year, T.C.A. § 28-3-104.

I.

If the plaintiff's interpretation of T.C.A. § 55-10-403(a)(2) is correct, DUI defendants – and they only – are the beneficiaries of a substantial benefit: the mandated fine includes the nightly cost of their incarceration, up to the amount of the fine. No other misdemeanant is the beneficiary of such largess; in many DUI cases the mandated fine would merely be "returned to the sheriff."

In *Knox County v. City of Knoxville*, 1988 WL 116454, (Tenn. Ct. App. 1988) the Court of Appeals [and the opinion is that of the Court, not just the "opinion of the judge who filed it"] held that a DUI offender must pay the jailer's fee pursuant to T.C.A. § 8-26-104 in addition to the fine for drunk driving pursuant to T.C.A. § 55-10-403, reasoning that

> . . . there are several reasons why this must be result. As a general rule, statutes on the same subject must be read *in pari materia*, (Citation omitted). The Court it required to interpret such statutes in a manner which avoids conflict between them and should strive to interpret the

statutes so as to provide a harmonious operation of the law. (Citation omitted). The two statutes at issue do not conflict when the DUI statute requiring reimbursement is read as an alternative means for counties to recover the costs of incarceration. This allows for a harmonious operation of the statute. In addition, it must be presumed that the Legislature was aware of the jailors fee when it passed the DUI statute. (Citation omitted). This is especially true when, as with the statutes at issue, the new statute specifically refers to the prior statute. (Citation omitted). The Legislature specifically noted the existence of the jailer's fee statute in the DUI statute. The DUI statute does not purport to exempt DUI offenders from the payment of jailer's fees, rather it refers to the general jailer's statute for the method of determining the amount of reimbursement. Thus, it is clear that the legislative intent was that DUI offenders pay both the jailer's fee and the fine for DUI.

Finally, a fundamental purpose of statutory construction 'is to ascertain and, if possible, give effect to the intention or purpose of the Legislature.' *Worrall v. Kroger Co.*, 545 S.W.2d 736, 738 (Tenn. 1977). An interpretation which frustrates that purpose is impermissible. *Tidwell v., Collins*, 522 S.W.2d 674676 (Tenn. 1975). T.C.A. § 55-10-402, *et seq.* sets forth a comprehensive plan dealing with drunk driving. Clearly, the purpose of this law is to punish intoxicated drivers and deter such conduct in the future. The main goal of the statute is to penalize intoxicated drivers, not to provide reimbursement of incarceration costs. Allowing DUI offenders to avoid the jailer's fees charged to other misdemeanants would certainly detract from the

> penal nature of the statute and frustrate the purpose of the legislative scheme. Thus, a DUI offender must pay both the jailer's fee and the DUI fine.

Further review of *Knox County v. City of Knoxville* was apparently not sought, and the plaintiff questions its precedential value since DUI offenders were not before the Court. Be that as it may, I feel constrained, as did the defendants, to abide the holding in *Knox County*. The motion of the defendants for summary judgment is granted and the complaint is dismissed at the costs of the plaintiff. All other issues are pretermitted.

/s/ William H. Inman
WILLIAM H. INMAN,
CHANCELLOR
By Designation of the
Chief Justice

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

JULI BROWN, et al v. KNOX COUNTY & LILLIAN BEAN

No. E1999-01185-SC-R11-CV

ORDER

(Filed Mar 5, 2001)

Upon consideration of the application for permission to appeal and the record before us, the application is denied with the recommendation that the Court of Appeals opinion be published.

PER CURIAM

IN THE CHANCERY COURT
FOR KNOX COUNTY, TENNESSEE

Juli Brown, on behalf herself and all others similarly situated,	)	**No. 142569-2**
Plaintiffs,	)	**CLASS ACTION**
vs.	)	
Knox County and Lillian Bean individually and in her former official capacity as clerk of court.	)	
Defendants.	)	

COMPLAINT

(Filed Apr 13, 1999)

Come now the plaintiffs and for their cause of action state the following:

INTRODUCTION

1. When individuals are found guilty of a crime in Tennessee, it is the normal practice to require the defendant to pay both a fine, if any, court costs, and any applicable jail fees.

2. Tennessee law imposes certain mandatory minimum fines for persons convicted of driving under the influence of alcohol or drugs (DUI). The minimum mandatory fines generally increase according to the number of times a defendant has been convicted previously of DUI. Tennessee law also imposes certain mandatory minimum periods of incarceration for persons convicted of

DUI. The mandatory minimum number of days of incarceration generally increases as well depending upon the number of times a defendant has been convicted previously.

3. In the case of persons found guilty of driving under the influence of drugs or alcohol, Tennessee Code Annotated §55-10-403(a)(2) requires that "[a] portion of any fine imposed upon a person for a violation of this section, up to the maximum fine actually imposed, shall be returned to the sheriff of a county jail or the chief administrative officer of a city jail for the purpose of reimbursing such sheriff or officer for the cost of incarcerating such person for each night such person is actually in custody for a violation of this section."

4. The plain language of § 55-10-403(a)(2) makes it clear that the legislature did not intend and there is no lawful authority to impose a separate jail fee for violations of § 55-10-403 unless the jail fees exceed the amount of the fine imposed by the court. (See attachment A, State Attorney General's Opinion No. U96-071, and Attachment B, Memorandum of Understanding signed by Catherine Quist, Circuit Court Clerk for Knox County, Tennessee).

5. Despite the clear and unambiguous language of § 55-10-403(a)(2), former Knox County Circuit Court Clerk, Lillian Bean, collected jail fees from persons found guilty of driving under the influence of drugs or alcohol without first crediting the fines mandated by the Tennessee DUI statute, Tennessee Code Annotated § 55-10-403(a)(1).

6. Despite an official legal opinion dated November 26, 1996, from the Tennessee Attorney General (Attachment A), Lilian Bean and Knox County continued the practice of collecting jail fees with no offset for court imposed fines.

7. Tennessee Code Annotated § 8-21-101 provides:

> **Express authorization required.** – No officer is allowed to demand or receive fees or other compensation for any service further than is expressly provided by law.

Tennessee Code Annotated § 8-21-103 further provides:

> **Penalty for excessive fees charged.** – If any officer demands or receives any other or higher fees than are prescribed by law, such officer is liable to the party aggrieved in the penalty of fifty dollars ($50.00), to be recovered before any judge of the court of general sessions, and the officer also commits a Class C misdemeanor.

8. Plaintiff brings this action on behalf of herself and other similarly situated individuals who have been assessed additional amounts for jail fees and fines in violation of § 55-10-403(a)(2).

9. The relief sought includes declaratory relief to declare the practice of collecting jail fees where there is no statutory basis for doing so to be unlawful and equitable relief requiring the county which received the excess monies to return those monies to the rightful owners, and reasonable attorney fees, costs, and expenses involved in bringing this action.

10. This court also has jurisdiction and authority to grant the relief sought pursuant to Tennessee Code Annotated § 8-21-101 and § 8-21-103, Title 42 of the United States Code § 1983, Rule 23 of Tennessee Rules of Civil Procedure, and Tennessee law requiring clerks of court to surrender excess fees. *See, State v. Hobbs,* 250 S.W.2d 549 (Tenn. 1952) and *State v. Cobb,* 202 S.W.2d 819 (Tenn. 1947).

11. Personal jurisdiction and venue are predicated upon Rule 23 of the Tennessee Rules of Civil Procedure. The defendants are found in Knox County and events giving rise to this cause of action occurred in Knox County. Furthermore, the ends of justice and the mandates of Rule 23 of the Tennessee Rules of Civil Procedure require that other parties residing in other districts be afforded an opportunity to come before the Court as members of the plaintiff class.

PARTIES/PARTICIPANTS

12. Plaintiff, Juli Brown, is a resident of Tennessee and following a conviction in the General Sessions Court of Knox County, Tennessee, for Driving Under the Influence, was assessed and/or paid both a fine and jail fees without having her fine reduced by the amount of her jail fees as required by § 55-10-403(a)(2).

13. Defendant, Lillian Bean, was the Circuit Court Clerk for Knox County, Tennessee, when Ms. Burris and thousands of others were overcharged fines and jail fees in violation of the dictates of § 55-10-403(a)(2). Defendant Bean may be served at her residence, 6915 Central Avenue Pike, Knoxville, TN 37918.

14. Defendant, Knox County, Tennessee, may be served through the Knox County Law Department.

15. Plaintiffs assert their claims against defendant Bean in her individual as well as her official capacity.

PLAINTIFF CLASS ALLEGATIONS

16. Plaintiff brings this action pursuant to Rule 23 of the Tennessee Rules of Civil Procedure as a representative and on behalf of all others similarly situated.

17. The class of all other persons similarly situated is composed of all persons who:

a. Have been convicted or have pleaded guilty in Knox County, Tennessee, to driving under the influence of an intoxicant.

b. Have been assessed and/or paid both a fine and jail fees; and

c. Have not had their jail fees reduced by the fine, up to and including the total amount of the fine, where applicable.

18. Plaintiff is a member of the class she seeks to represent.

19. The members of the class are readily ascertainable but are so numerous that joinder is impractical.

20. There are questions of law and fact common to the class, including:

a. Whether defendants participated in the conduct alleged herein;

b. Whether there is statutory authority for defendants' actions as alleged herein;

c. Whether defendants' actions as alleged herein are in violation of T.C.A. § 55-10-403(a)(2);

d. Whether defendants acted without statutory authority in committing the acts alleged herein;

e. Whether defendants' actions violated the Fifth or Fourteenth Amendments to the United States Constitution or the Tennessee Constitution in taking property from the plaintiffs and others similarly situated without due process of law;

f. Whether the members of the plaintiff class have sustained damages and what is the proper measure of damages;

g. Whether it is appropriate to order judgments corrected where the assessments violate T.C.A. § 55-10-403(a)(2) and the fines and/or jail fees have not yet been paid;

h. Whether or not it is appropriate to enjoin further assessments in violation of T.C.A. § 55-10-43(a)(2); and

i. Whether or not it is appropriate to enjoin further collections of both fines and jail fees where the collections violate T.C.A. § 55-10-403(a)(2).

21. Plaintiff's claims are typical of the claims of members of the class in that plaintiffs and the members of the class have all been assessed and/or paid both fines and jail fees without having the fines credited against the jail fees as required by T.C.A. § 55-10-403(a)(2).

22. Plaintiff will fairly and adequately protect the interests of each member of the class and have retained

counsel competent and experienced in complex class actions.

23. Class certification of the plaintiff class is appropriate under Rule 23 of the Tennessee Rules of Civil Procedure because common issues of law and fact relative to the defendants' conduct predominate over individual issues. A class action is superior to other available methods for the fair and efficient adjudication of this litigation since individual joinder of all potential plaintiffs is impracticable.

24. A class action is superior to individual litigation because thousands of separate lawsuits would magnify the delay and expense for the parties and the courts. By contrast the class action device presents far fewer management difficulties and provides the benefits of unitary adjudication, economies of scale, and comprehensive supervision in a single court of law.

25. Class certification is appropriate and this action satisfies the requirements of Rule 23.01 because the class is so numerous that joinder of all members is impracticable, there are questions of law or fact common to the class, the claims or defenses of the representative party are typical of the claims or defenses of the class, and the representative party will fairly and adequately protect the interests of the class.

26. Class certification is appropriate and class members have satisfied the requirements of Rule 23.02 because the prosecution of separate actions by or against individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual

members of the class which would establish incompatible standards of conduct for the defendants.

27. Class certification is appropriate and class members have satisfied the requirements of Rule 23.02 because adjudication with respect to individual members of the class could as a practical matter be dispositive of the interests of other members not parties to the adjudications or could substantially impair or impede their ability to protect their interests.

28. Class certification is appropriate and class members have satisfied the requirements of Rule 23.02 because the defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

29. Class certification is appropriate and class members have satisfied the requirements of Rule 23.02 because questions of law or fact common to the plaintiff class predominate over any questions affecting only individual members and a class action is superior to any other available method for the fair and efficient adjudication of this controversy.

30. Plaintiff seeks injunctive relief in the form of:

a. An order requiring defendants to abide by the provisions of T.C.A. § 55-10-403(a)(2) in all future cases where persons are convicted of driving under the influence of alcohol or drugs.

b. An order requiring defendants to amend judgments and assessments already entered, but where the monies have not yet been

collected, to accord with the provisions of § 55-10-403(a)(2).

FACTUAL ALLEGATIONS RELEVANT TO ALL CLAIMS

31. The Tennessee Code requires that persons convicted of Driving Under the Influence of Intoxicants be required to pay at least minimum levels of fines. The statutory minimum goes up depending upon the number of previous convictions for driving under the influence.

32. The Tennessee Code requires that persons convicted of Driving Under the Influence of Intoxicants serve at least a minimum number of days in jail or prison. The minimum number days a defendant must spend in jail goes up depending upon the number of previous convictions for driving under the influence.

33. Knox County Sessions courts typically assess both fines and jail costs to defendants convicted of Driving Under the Influence.

34. Persons convicted of Driving Under the Influence typically face the threat of violating probation and having to spend additional time in jail if they fail to pay fully the monies, including fines and jail fees, owed to the clerk of court as a result of applicable judgments.

35. When the clerk of court fails to reduce jail fees by the fine imposed, the fine eventually owed or paid is larger that it would have been had clerk followed the dictates of T.C.A. § 55-10-403(a)(2).

36. Fines imposed under the Tennessee DUI statute are paid to the counties in which the cases are adjudicated.

37. The defendants have failed to properly credit fines against jail fees as required by T.C.A. § 55-10-403(a)(2).

38. Plaintiff and all other similarly situated persons have been forced to pay monies to the defendants where there is no statutory authority for assessing or collecting those monies.

39. On or before the date of the Memorandum of Understanding (Attachment B) the present clerk of court for Knox County circuit and sessions court brought Knox County into conformity with the law.

40. The Clerk of Criminal Court for Knox County, Tennessee, has always assessed fines and jail fees in conformity with the Tennessee Attorney General's Opinion (Attachment A).

COUNT I

41. Paragraphs 1 through 40 are specifically incorporated by reference as if set out fully herein.

42. The defendants' conduct has deprived the plaintiff and all other similarly situated persons of property without due process of law and under color of law in violation of their rights under the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 8 of the Constitution of Tennessee.

COUNT II

43. Paragraphs 1-42 are specifically incorporated by reference as if set out fully herein.

44. Defendants have received jail fees and fines from the plaintiffs and all others similarly situated in excess of those authorized by Tennessee law.

45. Each receipt of the above excess jail fees and fines constitutes a separate violation of T.C.A. § 8-21-103.

PRAYER FOR RELIEF

WHEREFORE, plaintiff on behalf herself and all others similarly situated, prays for judgment as follows:

1. Declaring this action to be a class action;

2. Certifying a plaintiff class;

3. Awarding plaintiff and all members of the plaintiff class monetary compensation in the amount collected from them in excess of the amount authorized by T.C.A. § 55-10-403(a)(2).

4. Awarding plaintiff and all members of the plaintiff class reasonable interest on the monies collected from them in excess of the amounts authorized by T.C.A. § 55-10-403(a)(2).

5. Awarding such injunctive relief as might be appropriate, including:

   a. A declaration that Tennessee law requires clerks to reduce the jail fees assessed against a person convicted of a violation of the Tennessee DUI statute by the amount of any fine imposed under that statute.

b. A requirement that the defendants cease collecting fines and jail fees in excess of those authorized by T.C.A. § 55-10-403(a)(2).

c. That the defendants be required to amend the computations of fines and jail fees for members of the plaintiff class to reflect the appropriate amount of fines and jail fees as authorized by T.C.A. § 55-10-403(a)(2).

6. For the costs of the suit, including reasonable attorney fees.

7. For such other relief, including pre- and post-judgment interest, as the Court deems just and proper.

8. Awarding plaintiff and all members of the plaintiff class monetary compensation in the amount of $50.00 for each instance in which jail fees were collected from the plaintiff and all others similarly situated without first having the jail fees reduced by the fine imposed.

ATTORNEYS FOR THE PLAINTIFF

/s/ A. James Andrews
A. James Andrews, BOPR #15772
ANDREWS+HUDSON, P.C.
606 W. Main Avenue
Knoxville, TN 37902
(423) 525-4200

/s/ Steven Oberman
Steven Oberman, BOPR #7230
Daniel & Oberman
An Association of Trial Lawyers
550 W. Main Avenue, Suite 950
Knoxville, TN 37902
(423) 546-7746

COST BOND

I hereby certify myself as surety for costs in this matter not to exceed five hundred dollars.

/s/ A. James Andrews
A. James Andrews

Court of Appeals of Tennessee, Western Section,
at Knoxville.

**KNOX COUNTY, Tennessee and Sheriff Joe Fowler,
Plaintiffs-Appellees,**

v.

**CITY OF KNOXVILLE, Kyle C. Testerman, Mayor,
and Rick Dulaney, Director of Finance,
Defendants-Appellants.**

Nov. 2, 1988.

Petition to Reconsider Denied Dec. 7, 1988.

Knox Chancery, CA No. 759, From Chancery Court of Knox County at Knoxville. Frederick D. McDonald, Chancellor.

Dale C. Workman, Knox County Law Director, Michael W. Moyers, Deputy Law Director, Knoxville, for plaintiffs-appellees.

John T. Batson, Jr., Deputy Law Director, City of Knoxville, for defendants-appellants.

OPINION

FARMER, Judge.

Defendants appeal from an order of the Chancery Court of Knox County granting judgment to the plaintiff, Knox County (hereinafter County), in an action to recover the cost of incarceration from fines assessed for driving under the influence (DUI) paid to the City of Knoxville (hereinafter City).

This case turns completely on the interpretation and application of two Tennessee statutes, both of which deal

with the recovery by the County jail of the cost of incarcerating misdemeanor prisoners. A general jailer's statute, Tenn.Code Ann. § 8-26-105 (Supp.1987) authorizes each county to set a per day charge for misdemeanor prisoners. Pursuant to this statute, the Knox County Board of Commissioners passed Resolution K which reads as follows:

RESOLUTION K

RE: ESTABLISHMENT OF JAILERS FEES FOR MISDEMEANANT PRISONERS

WHEREAS, the cost per day per prisoner incarcerated in the Knox County Jail is approximately $33.50 per day, and

WHEREAS, Chapter 896 of the Public Acts of 1984 amended the provisions of TCA 8-26-105 to provide that the County Legislative Body could fix the amount of the Jailer's fees without the previous limitations of a maximum of $8.00, and

WHEREAS, the contracts and rate of reimbursement by the various federal agencies is at the rate of $25.00, which is more reflective of the actual cost of jail confinement, and

WHEREAS, persons in prison for misdemeanors should pay the cost or a more substantial portion thereof, and

WHEREAS, a more reasonable Jailer's Fee creates more revenue for the operation of such jail facility and is in the best interest of the citizens and residents of Knox County, and

WHEREAS, the Finance Committee recommends it.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Knox County Board of Commissioners in regular session assembled this 20th day of August, 1984 that pursuant to Chapter 896 of the Public Acts of 1984 the Jailer's Fees to be applied to misdemeanant prisoners and those prisoners confined in the County Jail not meeting the conditions for State subsidy under TCA 41-8-101 shall be established at $33.50 per day effective September 1, 1984.

BE IT FURTHER RESOLVED, this resolution take effect immediately, the public welfare requiring it.

Consequently, each misdemeanant incarcerated in the Knox County Jail is charged $33.50 per day in confinement.

The second statute at issue is a part of the drunk driving scheme, T.C.A. §§ 55-10-403 *et seq.* This section, 55-10-403(a)(2) (Supp.1988), reads as follows:

A portion of any fine imposed upon a person for a violation of this section, up to the maximum fine actually imposed, shall be returned to the sheriff of a county jail or to the chief administrative officer of a city jail for the purpose of reimbursing such sheriff or officer for the cost of incarcerating such person for each night he is actually in custody for a violation of this section. Such reimbursement shall be in the same amount as is provided by § 8-26-105, and shall not in any event be less than actual cost of maintaining such person and shall be reimbursed in the manner provided by § 8-26-106.

This case arose when Knox County sought reimbursement of costs from Knoxville pursuant to § 55-10-403(a)(2) (hereinafter the DUI statute) in addition to the payment by the offenders of jailers' fees pursuant to § 8-26-104 (hereinafter the jailer's fee statute). The City of Knoxville refused to pay over the fines for DUI confinements because of the resulting double payments for some offenders.

The Chancellor held that the DUI statute mandated the payment of the cost of incarceration from the DUI fine. In order to avoid double payments by individual offenders, the Chancellor ordered that the portion of the DUI fine used to reimburse the County for the cost of incarceration be used to create a credit for the benefit of that offender against the jailer's fee. In addition, the order required any excess jailer's fees to be repaid to the DUI offenders. Both sides take issue with that portion of the ruling.

Because there is no conflict in the evidence as to any material fact, the questions on appeal are entirely questions of law. Therefore, the standard of review is *de novo* with no presumption of correctness. *Billington v. Crowder,* 553 S.W.2d 590, 595 (Tenn.App.1977).

The question presented by the parties on appeal is whether T.C.A. § 55-10-403(a)(2) requires that the County Sheriff be paid, out of fines collected from persons convicted of DUI, a per diem incarceration cost (i.e., a jailer's fee) irrespective of whether or not that same cost is recovered or collected from another source authorized by T.C.A. § 8-26-105 as amended by Chapter 896, Section 7,

of the 1984 Public Acts of Tennessee. In addressing this question, two issues must be resolved:

(1) Whether DUI offenders must pay the jailer's fee pursuant to T.C.A. § 8-26-104 in addition to the fine for drunk driving pursuant to T.C.A. § 55-10-403;

(2) Whether the receipt of a jailer's fee from a DUI offender precludes the County's reimbursement for incarceration costs from that individual's fine pursuant to T.C.A. § 55-10-403(a)(2).

Both of these questions are answered in the affirmative. As to the first issue, a DUI offender must pay both the jailer's fee and the fine for drunk driving in its entirety. There are several reasons why this must be the result. As a general rule, statutes on the same subject must be read in *pari materia*. *Dixie Rents, Inc. v. City of Memphis*, 594 S.W.2d 397 (Tenn.App.1979). The court is required to interpret such statutes in a manner which avoids conflict between them and should strive to interpret the statutes "so as to provide a harmonious operation of the laws." *Parkridge Hospital, Inc. v. Woods*, 561 S.W.2d 754, 755 (Tenn.1978). The two statutes at issue do not conflict when the DUI statute requiring reimbursement is read as an alternative means for counties to recover the costs of incarceration. This allows for a harmonious operation of statutes.

In addition, it must be presumed that the Legislature was aware of the jailer's fee, T.C.A. § 8-26-104 when it passed the DUI statute. *Equitable Life Ins. Co. v. Odle*, 547 S.W.2d 939, 941 (Tenn.1977). This is especially true when, as with the statutes at issue, the new statute specifically refers to the prior statute. *Ledbetter v. Duncan*, 676 S.W.2d

91, 93 (Tenn.App.1984). The Legislature specifically noted the existence of the jailer's fee statute in the DUI statute. The DUI statute does not purport to exempt DUI offenders from the payment of jailer's fees, rather it refers to the general jailer's statute for the method of determining the amount of reimbursement. Thus, it is clear that the legislative intent was that DUI offenders pay both the jailer's fee and the fine for DUI.

Finally, a fundamental purpose of statutory construction "is to ascertain and, if possible, give effect to the intention or purpose of the legislature." *Worrall v. Kroger Co.*, 545 S.W.2d 736, 738 (Tenn.1977). An interpretation which frustrates that purpose is impermissible. *Tidwell v. Collins*, 522 S.W.2d 674, 676 (Tenn.1975). T.C.A. § 55-10-401 *et seq.* sets forth a comprehensive plan dealing with drunk driving. Clearly, the purpose of this law is to punish intoxicated drivers and deter such conduct in the future. The main goal of the statute is to penalize intoxicated drivers, not to provide reimbursement of incarceration costs. Allowing DUI offenders to avoid the jailers' fees charged to other misdemeanants would certainly detract from the penal nature of the statute and frustrate the purpose of the legislative scheme. Thus, a DUI offender must pay both the jailer's fee and the DUI fine.

The second issue involves what the County is entitled to recover as incarceration costs. The County argues that it is entitled to receive funds from the City pursuant to both statutes asserting that the Legislature intended the system of accounting for incarceration costs be looked as a whole. This would allow the County to compare total incarceration costs with total fines collected. The result would be that funds paid in by some DUI offenders

would be used twice to pay incarceration costs since some offenders pay neither the fine nor the jailer's fee. This interpretation would allow Knox County to more nearly achieve a balance between the cost of incarceration of all DUI offenders and the amount recovered from offenders. While this result may appear more equitable, legislative intent must be "ascertained primarily from the natural and ordinary meaning of the language used . . .without any forced or subtle construction to limit or expend the import of that language." *Oliver v. King,* 612 S.W.2d 152, 153 (Tenn.1981). The DUI statute reads in pertinent part: "A portion of any fine imposed *upon a person* . . . shall be returned . . . for the purpose of reimbursing . . . for the cost of incarcerating *such person* for *each night he* is *actually* in custody." (emphasis added) T.C.A. § 55-10-403(a)(2). The general jailer's fee statute refers to individual prisoners and Resolution K, passed by the County Commissioners, is based on "the cost per day *per prisoner.*" (emphasis added) To interpret legislative intent of these statute [sic] as requiring a system wide accounting of incarceration costs rather than an individualized basis would require a forced construction and would stray from the natural and ordinary meaning of the words chosen by the Legislature. Thus it is clear that the Legislature intended these statutes to be applied on an individual basis. Furthermore, as the lower court correctly noted, the Legislature certainly intends "that an incarcerated individual pay only once for the cost of his upkeep." To hold otherwise would frustrate the legislative purpose of charging the cost of incarceration to the individual incarcerated and such a result is impermissible. *Tidwell v. Collins,* 522 S.W.2d 674, 676 (Tenn.1975).

The lower court in its order interpreting the DUI statute placed emphasis on the words "*shall be* returned" and held the statute to be mandatory. However, courts must read the entire statute rather than relying on a single word to determine legislative intent. *Worrall v. Kroger Co.*, 545 S.W.2d 736, 738 (Tenn.1978). The purpose of this statute is to provide an alternative means of *reimbursement* of incarceration costs. If the County recovers the actual cost of incarceration of a DUI offender by assessing and collecting a jailer's fee, nothing remains to be "reimbursed" with the DUI fine. In the case at hand, Resolution K states that the actual cost of incarceration is the basis for the jailer's fee. Therefore, the County may collect only the jailer's fee for each prisoner. However, in the event that the jailer's fee does not cover the actual cost of incarceration or the jailer's fee is not recovered, the County shall receive reimbursement from the City from the fine collected for that person.

Therefore, the decision of the lower court is affirmed as modified. Costs of this appeal are taxed against appellant, for which execution may issue if necessary.

CRAWFORD and HIGHERS, JJ., concur.

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
500 CHARLOTTE AVENUE
NASHVILLE, TENNESSEE 37243-0497

November 26, 1996

Opinion No. U96-071

Payment of jail fees pursuant to Tenn. Code Annotated § 55-10-403(a)(2).

QUESTION

Based upon Tenn. Code Ann. § 55-10-403(a)(2), must the jail fee be paid by the clerk from the fine which is imposed by the court or may it be charged separately as part of the cost of the action?

OPINION

The jail fee must be paid from the fine which is imposed by the trial court.

ANALYSIS

1. The primary purpose of statutory construction is to ascertain and give effect to the intention of the legislature as expressed in the statute.[1] The meaning of the statute is determined by viewing the statute as a whole

---

[1] *Westinghouse Electric v. King*, 678 S.W.2d 19, 23 (Tenn. 1984).

and in light of its general purpose.[2] Legislative intent is derived primarily from the natural and ordinary meaning of the language when read in context of the whole statute.[3] Consequently, the words of a statute should be considered to mean just what they say.[4]

Tenn. Code Ann. § 55-10-403(a)(2) requires that "[a] portion of any fine imposed upon a person for a violation of this section, up to the maximum fine actually imposed, shall be returned to the sheriff of a county jail or the chief administrative officer of a city jail for the purpose of reimbursing such sheriff or officer for the cost of incarcerating such person for each night such person is actually in custody for a violation of this section. Such reimbursement shall be in the same amount as provided by § 8-26-105, and shall not in any event be less than the actual cost of maintaining such person and shall be reimbursed in the manner provided by § 8-26-106." Since this statute states that the reimbursement to the sheriff or officer must come from "a portion of any fine imposed", it is clear that the legislature did not intend that a separate jail fee be charged. Consequently, based upon the natural and ordinary language of the statute, the jail fee must be paid by the clerk from the fine imposed by the clerk.

---

[2] *City of Lenoir City v. State ex. rel., City of Loudon*, 571 S.W.2d 297, 299 (Tenn. 1978).

[3] *James Cable Partners, L. P. v. City of Jamestown*, 818 S.W.2d 338, 341 (Tenn. App. 1991).

[4] *State v. Rollins*, 785 S.W.2d 129, 131 (Tenn. Crim. App. 1989).

/s/ Charles W. Burson
CHARLES W. BURSON
Attorney General & Reporter

/s/ Michael E. Moore
MICHAEL E. MOORE
Solicitor General

/s/ Merrilyn Feirman
MERRILYN FEIRMAN
Assistant Attorney General

Requested By:

Joe F. Fowlkes
State Representative
Route 1, Box 121
Nashville, Tennessee 37047

JUDGMENT

IS THE JUDGMENT OF THE COURT THAT:

[✓] The defendant is found guilty of the offense of DUI 5th
AND the defendant shall pay costs.

[✓] Defendant is sentenced to be confined in the Knox County Penal Farm or equivalent institution for a period of 11/27 susp all 150 days

[✓] Defendant shall pay a fine of $1100

[ ] Defendant shall pay restitution of $____

[ ] LIC. TAKEN IN COURT _____

[✓] LIC. REV. 5 years

[✓] Supervised probation thru the Knox County Probation Office.

[ ] The charge is dismissed.

[ ] The charge will be dismissed upon payment of costs by the defendant.

[ ] The defendant is bound to the Grand Jury pursuant to the attached record of Preliminary Examination. Bond $_____.

[✓] Other: 10-25-96 Balance of sentence suspended by #5

This the 17th day of July 1996

/s/ James Y. Reed
Judge SP for #1

[ ] Defendant's probation is/is not revoked due to following conditions:

_____

_____

_____ _____

Judge Date

[illegible]

NO. 96 7409 L

VOP served 2-12-97 – Att. served 7-16-96 (8000)

STATE OF TENNESSEE

vs

TERRY LYNN SMITH

Address #113 Middle Brook Inn

37921 Knoxville TN

DOB 010665

DL #61295526 REVOKED

Offense DUI (5TH)

Issued this 26 day of MAR 19 96.

RETURN

Came to hand and executed by arresting the defendant this 26 day of MAR

1996 at 2156 am/pm

B. HAMRICK 1585
Officer: City – County – THP – UT

Trial set _____, 19 __ at _____.

(To make bond) 4-24-96 9:00 #2 DUI 5-28-97 DUI OTR 6-12-96 D/TRL 7-2-97 OTR 7-16-96 OTR-/DUI OTR 7-28-96

Att 7-28-96 Bond 8000

2-12-97 12:00

Bond $ $3,500.00

Atty for Def. PD

Bonding Co. _____

Mediation _____

SPN # 112056

Case # 9647373MMACI

WAIVER OF ATTORNEY

I understand that I have the right to an attorney and that if I am indigent and cannot afford an attorney the Court will appoint an attorney to represent me. It is my desire to waive my right to an attorney in this case.

_____

Signature

WAIVER AND PLEA

I understand that I have the right to be tried in Criminal Court upon an indictment or presentment by the Grand Jury. I also have the right to a trial by jury. I desire to waive these rights and to be tried in General Sessions Court on this warrant.

I Plead Guilty Larry Smith
to the charge in this warrant.

NOTICE: The Tennessee rules of Criminal procedure provide that there is no appeal from a plea of guilty, except as to sentence.

Mackey & McClintock enhancement explained

The District Attorney General does not object to this case being tried in General Sessions Court.

[ ] This warrant is cancelled at the request of the District Attorney General.

[ ] This warrant is amended to charge the offense of _____

[ ] By agreement of the parties.

[ ] By motion of the State.

ATTEST 6-20-97

Certified a True Copy

/s/ Betty J. Housewright
Sessions Court Clerk

_____ _____
Date Judge

FINE & BILL OF COSTS

Co. Lit	27.25
Lit. Tax	25.75
Library Tax	1.25

I. F		4.75
Affidavit & Warrant		4.00
Judgment		3.00
Docketing		2.00
Bill of Costs		5.00
Arrest Fees		15.00
Data Process Service		4.00
Session Judge Tax		6.00
D.A.R.E		0.75
Jail Fees	$38.50 per day	5,775.00
Mittimus	2.00 ea.	4.00
Bonds	7.75	7.75
Abstracts	2.00/4.00	4.00
Breathalyzer	17.50	
Continuance	1.50 ea.	7.50
Issuing Subpoena	3.50 ea.	14.00
Serving Subpoena	5.00 ea.	20.00
DUI & Fire Arms	5.00	5.00
Set Aside	4.00	
Dr. Lic. in Lieu of Bond	4.00	
Criminal Injury	26.50/50.00	26.50
with a child	550.00	
Order	6.00	6.00
Issue Scire Facias & Copy	6.50	
Issue Attachment	5.00	5.00
Enter Judgment	3.00	3.00
Serving Scire Facias	11.00	
Arrest on Bond Forf.	15.00	15.00
Jail Fees on Forf. & Att.	38.50	77.00
Mittimus on Forf	2.00	2.00
Bond on Forf	7.75	7.75
Docketing Forf	2.00	2.00
Final Forf	5.00	
Failure to Comply	2.00	
DIF	5.00	5.00

TBIF	10.00/25.00	10.00
A.G.....	75.00	
P.D.	12.50	12.50
Def 15.00		
Costs.....		
Fine.....		1100.00
Total Fine & Costs		7,222.75

GENERAL SESSIONS COURT, KNOX COUNTY, TENNESSEE
AFFIDAVIT OF COMPLAINT

The affiant, B. HAMRICK 1585 87089W, after first being duly sworn according to law, states that a criminal offense has been committed in Knox County, Tennessee, by the defendant, TERRY LYNN SMITH whose last known address is #113 MIDDLEBROOK INN KNOXVILLE TN 37921

Further, affiant makes oath that the essential facts constituting said offense, the date of said offense, and the sources of affiant's information concerning said facts are as follows:

032696 AT ABOUT 2115 HRS I OFFICER HAMRICK 1585 OBSERVED A BLUE FORD THUNDERBIRD TAG 029 DJJ SPEEDING 66 IN 45 ZONE AT MIDDLEBROOK AND 44th THE DRIVER WAS TERRY LYNN SMITH. SMITH HAD SLURRED SPEECH RED BLOOD SHOT EYES WAS UNSTEADY ON HIS FEET AND STRONG ODOR OF AN ALCOHOLIC BEVERAGE ON HIS BREATH. SMITH FAILED 3 FIELD SOBRIETY TESTS SMITH REFUSED A BREATH ALCOHOL TEST. THIS OCCURED IN KNOXVILLE KNOX CO TN.

AFFIANT'S SIGNATURE /s/ Brent Hamrick

ADDRESS & ZIP CODE KPD

TELEPHONE NUMBERS
WORK 521-1200
HOME _____

Personally sworn to and subscribed by the affiant before me this 26 day of MAR, 1996.

/s/ H.R. Stewart
Judge, General Sessions
Court/Judicial Commissioner

STATE WARRANT

To any Lawful Officer of the State:

Information on oath in the form of an Affidavit of complaint having been made to me that the offense of DUI (5TH) has been committed by the defendant, TERRY SMITH, in Knox County, Tennessee, and it appearing from said affidavit(s) that there is probable cause to believe the said offense has been committed and to believe the said defendant committed it; you are, therefore, commanded in the name of the State of Tennessee forthwith to arrest the said defendant and bring him or her before the nearest appropriate magistrate in the county in which the defendant is arrested. The defendant is required to appear in this court at the time set out on this warrant to answer the charge contained herein. Appearance bond for the defendant is set at $3,500.00

Issued this 26 day of MAR, 1996.

/s/ H.R. Stewart
Judge, General Sessions
Court/Judicial Commissioner

WITNESSES S. ODUM (BAT) 1593
ADDRESS & ZIP CODE KPD 87285W
TELEPHONE NUMBERS 521-1200

ATTEST 6-20-97
Certified a True Copy
/s/ Betty Housewright
Sessions Court Clerk

IN THE GENERAL SESSIONS COURT FOR KNOX COUNTY, TENNESSEE

DIVISION

STATE OF TENNESSEE

VS.

Terry Lynn Smith, ALIAS

DOCKET NO.
7409L
Case #9647373
MMACI

VIOLATION OF PROBATION

It appearing to the Court that the defendant in the above-styled case was convicted of the offense of DUI – 5th on the 17 day of July, 1996 and received a sentence of 11/27 in the Knox County Penal Farm to be suspended except for 150 days, said suspension conditional upon paying $1100 fine + costs, and it further appearing to the Court that the defendant has failed to pay fine and costs.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that a warrant issue charging Terry Lynn Smith, ALIAS with Violation of Probation.

ENTER this 28 day of May, 1997

7410L

/s/ Gail Stone Jarvis
JUDGE, GENERAL
SESSIONS COURT

WARRANT

TO ANY LAWFUL OFFICER OF THE STATE:

Information having been brought before the Court that Terry Lynn Smith, ALIAS is serving a suspended sentence upon a judgment of this Court and it appearing that said defendant has violated the conditions of said suspension.

YOU ARE THEREFORE, COMMANDED to arrest instantly the aforesaid Terry Lynn Smith, ALIAS and bring him before the Court to be dealt with according to the law.

Given under my hand and seal this 28 day of May, 1997

/s/ Gail Stone Jarvis
JUDGE, GENERAL
SESSIONS COURT

RETURN

Came to hand and executed by arresting the defendant this 28 day of May 1997, at 1:30 a.m./p.m.

/s/ Ralph C. Hillard
OFFICER KCSD

( ) To Be Held Without Bond
( ) _____ Bond
(✓) Cash Bond in the amount of $1100

/s/ Andy Long
ASSISTANT DISTRICT ATTORNEY
5-28-97
DATE PREPARED

Supreme Court, U.S.
FILED
JUL 3 2001
CLERK

No. 00-1803

IN THE

Supreme Court of the United States

JULIE BROWN,

Petitioner,

v.

KNOX COUNTY, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE TENNESSEE COURT OF APPEALS

BRIEF FOR RESPONDENTS KNOX COUNTY AND LILLIAN BEAN, IN HER OFFICIAL CAPACITY AS FORMER CLERK OF THE COURT

MICHAEL W. MOYERS
Knox County Law Director
JOHN E. OWINGS*
Chief Deputy Law Director
400 Main Avenue, Suite 612
Knoxville, TN 37902
(865) 215-2327

Attorneys for Knox County and Lillian Bean, in her official capacity as former Clerk of Court

* *Counsel of Record*

167921

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED

1.

Whether Petitioner may appeal to this Court a state appellate court decision made adequately and independently on state law grounds.

2.

Whether Petitioner properly may raise an issue on appeal to this Court that was not raised by Petitioner before the state court below and that has not been addressed by the state court below.

3.

Whether the Tennessee statute requiring misdemeanants to pay any applicable jailers' fees in addition to the fines for their crimes was implicitly repealed by a statute which states that a portion of the penalty for driving under the influence of drugs or alcohol (DUI) shall be used to reimburse jailers for the cost of incarcerating DUI misdemeanants.

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B. The interpretation of Tenn. Code Ann. §§ 55-10-403 and 8-20-106 offered by the state courts is consistent with the rest of the state criminal code. 12

C. The plain meaning of Tenn. Code Ann. § 55-10-403(a)(2) requires only that sheriffs are reimbursed with some portion of the monies collected from DUI offenders and does not implicitly repeal the jailers' fee statute as it applies to DUI offenders. 13

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STATEMENT OF JURISDICTION

Petitioner asserts that this Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1257(a) (1993), based upon the interpretation of the state statutes at issue offered by the Court of Appeals of Tennessee. However, Petitioner cannot meet her burden of demonstrating that the decision of the state court meets the jurisdictional requirements of this Court.

First, as this Court has stated, its jurisdiction to review state court judgments requires that the state court's decision be made on federal law, not state law, grounds. *Yee v. City of Escondido*, 503 U.S. 519, 533 (1992); *see also Illinois v. Gates*, 462 U.S. 213, 218-220 (1983). "In the context of direct review of a state court judgment, the independent and adequate state court ground doctrine is jurisdictional." *City of Escondido*, 503 U.S. at 533. Since the Court of Appeals of Tennessee relied entirely upon independent and adequate state law grounds to decide this case and made no ruling on the federal claim belatedly raised here, Petitioner's due process issue lies outside the jurisdiction of this Court.

Second, this Court requires that an issue be presented to and addressed by the highest state court before the issue may be properly raised before this Court. *Adams v. Robertson*, 520 U.S. 83, 86-87 (1997); *Beck v. Washington*, 369 U.S. 541 (1962). Here, because Petitioner failed to raise or brief the due process claim on appeal below, the Court of Appeals of Tennessee did not address Petitioner's due process claim. Therefore, Petitioner's due process claim is not properly before this Court.

Additionally, this Court requires petitioners to demonstrate that invalid state statute claims were timely brought to a state court. *See, e.g., Adams v. Robertson*, 520 U.S. 83, 88 (1997); *Street v. New York*, 394 U.S. 576, 585 (1969). Here, Petitioner filed her initial complaint some three years after completing payment of the penalties imposed upon her for violating the DUI laws of Tennessee. Knox County has continuously asserted that Petitioner's 42 U.S.C. § 1983 (1993 & Supp. 2000) cause of action is barred by the one year statute of limitations of Tenn. Code Ann. § 28-3-104 (2000). *See Wilson v. Garcia*, 471 U.S. 261 (1985) (holding that the statute of limitations for a 42 U.S.C. § 1983 action is the applicable state statute).

Finally, this matter does not involve any conflict between state and federal courts or even among the courts of Tennessee. Both the United States District Court for the Eastern District of Tennessee and the United States Court of Appeals for the Sixth Circuit held that this issue was one of state law. *See Brown v. Tidwell*, 169 F.3d 330, 332 (1999). The statutes at issue have been interpreted consistently by numerous Tennessee courts, including the Chancery Courts of Davidson, Shelby and Knox counties and both the Eastern and Western Sections of the Court of Appeals of Tennessee. *See Brown v. Knox County*, 39 S.W.3d 585 (Tenn. App. 2000); *Knox County v. City of Knoxville*, 1988 WL 116456 (Tenn. Ct. App. Nov. 2, 1988); *Miles v. Davidson County*, No. 99-1096-III (Davidson County (Tenn.) Chancery Oct. 20, 1999); *Brown v. Knox County*, No. 142569-2 (Knox County (Tenn.) Chancery Oct. 4, 1999).

Therefore, Respondent respectfully asserts that Petitioner cannot satisfy the jurisdictional requirements of this Court and thus this Court need not exercise jurisdiction over this matter.

CONSTITUTIONAL PROVISION INVOLVED

Tenn. Const. art. II, § 24.

No public money shall be expended except pursuant to appropriations made by law. Expenditures for any fiscal year shall not exceed the state's revenues and reserves, including the proceeds of any debt obligation, for that year. No debt obligation, except as shall be repaid within the fiscal year of issuance, shall be authorized for the current operation of any state service or program, nor shall the proceeds of any debt obligation be expended for a purpose other than that for which it was authorized. In no year shall the rate of growth of appropriations from state tax revenues exceed the estimated rate of growth of the state's economy as determined by law. No appropriation in excess of this limitation shall be made unless the General Assembly shall, by law containing no other subject matter, set forth the dollar amount and the rate by which the limit will be exceeded. Any law requiring the expenditure of state funds shall be null and void unless, during the session in which the act receives final passage, an appropriation is made for the estimated first year's funding. No law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost. An accurate financial statement of the state's fiscal condition shall be published annually.

STATEMENT OF THE CASE

Petitioner was arrested in Knox County, Tennessee for driving under the influence of alcohol in violation of Tenn. Code Ann. § 55-10-401 on November 15, 1995. Petitioner pled guilty to this offense and paid the seventy-seven dollar ($77) jailers' fee at issue on February 16, 1996, in addition to a fine of three hundred and fifty dollars ($350).[1] Petitioner served two days in jail and did not appeal her plea, sentence, fine or fees.

Petitioner, along with plaintiffs from two other Tennessee counties, initially brought a 42 U.S.C. § 1983 action against the court clerks from three Tennessee counties in the United States District Court for the Eastern District of Tennessee in 1997. *See Brown v. Tidwell*, 169 F.3d 330 (1999). The federal suit alleged that the court clerks had violated due process by collecting both the DUI fine and a jailers' fee from the plaintiffs. On grounds different from the district court, the Court of Appeals for the Sixth Circuit upheld the district court's dismissal of the suit, holding that "an authoritative decision of the Tennessee courts about the practice would moot the plaintiffs' constitutional claim." *Id.* at 332. Petitioner did not file a petition for certiorari from this decision.

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1. Pursuant to Rule 15.2 of the Supreme Court Rules, Respondent asserts that contrary to Petitioner's statement of the case, court clerks generally do not persist "in a pattern of incarcerating or threatening to incarcerate offenders for their inability to pay. . . ." Instead, *if* the court makes payment of fees a condition of the offender's probation, pursuant to Tenn. Code Ann. § 40-35-303 (1997 & Supp. 2000), and *if* the offender willfully refuses to pay fees, the court may revoke probation, resulting in incarceration. *See State v. Dye*, 715 S.W.2d 36, 39-40 (Tenn. 1986) (citing *Bearden v. Georgia*, 461 U.S. 660, 667-68 (1983)).

Petitioner filed the instant suit in the Chancery Court for Knox County, Tennessee on April 13, 1999, on both state and federal law grounds, requesting class certification. The class was never certified, despite Petitioner's clearly erroneous drafting of the issue presented to this Court, which indicates that a class of thousands exists. The Chancery Court awarded summary judgment to Knox County, finding that a 1988 decision by the Court of Appeals of Tennessee had previously interpreted the statutes at issue to allow the collection of both a DUI fine and jailers' fee. *See Knox County v. City of Knoxville*, 1988 WL 116456 (Tenn. App. Nov. 2, 1988).

Petitioner's only support for her 42 U.S.C. § 1983 due process cause of action was a 1996 opinion of the Tennessee Attorney General. *See* Tenn. Op. Att'y Gen. U96-071 (1996).[2] While this two (2) paragraph opinion supports Petitioner's contention, such opinions "are not binding authority for legal conclusions, and courts are not required or obligated to follow them." *Washington County Board of Education v. Marketamerica, Inc.*, 693 S.W.2d 344, 348 (Tenn. 1985).

On Petitioner's appeal, the Court of Appeals of Tennessee reviewed the chancery court's interpretation of the statutes at issue de novo.[3] *See Brown v. Knox County*, 39 S.W.3d 585 (Tenn. App. 2000). In accord with their 1988 decision, the court held that Tenn. Code Ann. § 55-10-403(a)(2) does not impliedly release DUI offenders from the application of the jailers' fees statute, Tenn. Code Ann. § 8-26-105.

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2. Pursuant to Rule 15.2 of the Supreme Court Rules, Respondent clarifies that this opinion was requested more than ten years after the statute at issue became the law of Tennessee. *See* 1982 Tenn. Pub. Acts 891.

3. Petitioner did not appeal the decision of the chancery court to refuse certification of a class.

On appeal to the Supreme Court of Tennessee, certiorari was denied and the court ordered that the opinion of the Court of Appeals of Tennessee be published. Although Petitioner asks this Court to review a state court judgment, Petitioner failed to provide the information required by Rule 14(g)(i) of the Supreme Court Rules.

REASONS FOR DENYING THE WRIT

The issue in this case is a matter of state law — the proper interpretation of a Tennessee statute. As the Court of Appeals for the Sixth Circuit anticipated in dismissing Petitioner's earlier suit against the Knox County Clerk of the Court, the authoritative statutory interpretation offered by the state courts negates the due process issue. "[T]hey are being directed to Tennessee courts for interpretation of Tennessee statutes." *Brown v. Tidwell*, 169 F.3d 330, 332 (6th Cir. 1999). Furthermore, the appellate state courts have not addressed Petitioner's due process claim, which she abandoned on appeal. Therefore, this Court need not exercise its jurisdiction over this case.

Should this Court decide to exercise its jurisdiction, however, Petitioner's suggested interpretation of Tenn. Code Ann. § 55-10-403(a) is contrary to the plain meaning and to the legislative purpose of both this statute and the whole of Tennessee's DUI scheme. In addition, such an interpretation would be inconsistent with the imposition of all other criminal fines under the Tennessee Code.

I.

THE JUDGMENT OF THE STATE APPELLATE COURT BELOW RESTS INDEPENDENTLY AND ADEQUATELY UPON STATE LAW GROUNDS AND THEREFORE IS OUTSIDE THE JURISDICTION OF THIS COURT.

This Court has stated that its jurisdiction to review state court judgments requires that the state court's decision be made on federal law, not state law, grounds. *Yee v. City of Escondido*, 503 U.S. 519, 533 (1992); *see also Illinois v. Gates*, 462 U.S. 213, 218-220 (1983). "In the context of direct review of a state court judgment, the independent and adequate state court ground doctrine is jurisdictional." *City of Escondido*, 503 U.S. at 533. Here, the Court of Appeals of Tennessee relied entirely upon state law grounds to decide this case and made no ruling on the federal claim belatedly raised here in an attempt to obtain certiorari from this Court.

"It is, of course, 'incumbent upon this Court . . . to ascertain for itself . . . whether the asserted non-federal ground independently and adequately supports the judgment.' " *Michigan v. Long*, 463 U.S. 1032, 1038 (1983). However, where the appellate court does not even mention a federal claim or any due process issue, it is clear that the appellate decision was merely a matter of statutory interpretation made independent of federal law considerations.[4]

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4. The Court of Appeals of Tennessee did not address the federal civil rights claim because Petitioner did not raise it in her brief. *See Brown v. Knox County*, 39 S.W.3d at 586 n.2 (Cont'd)

Furthermore, the statutory interpretation engaged in by the Court of Appeals of Tennessee adequately responded to the only issue presented by Petitioner: "Whether the chancery court erroneously interpreted T.C.A. § 55-10-403(a)(2) when it disagreed with a Tennessee Attorney General's opinion holding that this statute requires clerks of court to reduce jail fees imposed on persons convicted of violating Tennessee's DUI statute by the amount of any fine imposed." (*See* App. at 2a.) Similarly, Petitioner's appeal to the Supreme Court of Tennessee failed to raise an issue of federal law. (*See* App. at 4a.)

In addition, this Court has "recognized that the failure to comply with a state procedural rule may constitute an independent and adequate state ground barring our review of a federal question." *Hathorn v. Lovorn*, 457 U.S. 255, 262 (1982). The Tennessee Rules of Appellate Procedure state, "Review generally will extend only to those issues presented for review." Tenn. R. App. P. 13(b) (2000). Petitioner did not present a federal due process claim for review. Although Tennessee appellate courts may exercise discretionary review over issues not presented in some situations, the court below did not address due process in this case. Therefore, Petitioner's failure to request review of her federal law issue in the Tennessee appellate courts constitutes an independent and adequate state ground barring review of this issue.

(Cont'd)

("The complaint also alleges deprivation of property without due process of law and under color of state law in violation of the Fifth and Fourteenth Amendments to the United States Constitution and Article 1, Section 8 of the Tennessee Constitution. These aspects of the complaint are not at issue on the instant appeal."). Neither did Petitioner argue that Ms. Bean was not entitled to qualified immunity. In the absence of a civil rights claim, no claim lies against Ms. Bean in her individual capacity.

II.

THE ISSUE PETITIONER BRINGS TO THIS COURT HAS NOT BEEN ADDRESSED BY THE STATE APPELLATE COURTS, BECAUSE PETITIONER FAILED TO RAISE A DUE PROCESS CLAIM BEFORE THE COURT OF APPEALS OF TENNESSEE.

For an issue to be properly raised before this Court, this Court requires that the issue be presented to and addressed by the highest state court. *See, e.g., Adams v. Robertson*, 520 U.S. 83, 86-87 (1997); *Beck v. Washington*, 369 U.S. 541 (1962); *Memphis Natural Gas Co. v. Beeler*, 315 U.S. 649, 651 (1942).

> With "very rare exceptions," we have adhered to the rule in reviewing state court judgments under 28 U.S.C. § 1257 that we will not consider a petitioner's federal claim unless it was either addressed by, or properly presented to, the state court that rendered the decision we have been asked to review.

Robertson, 520 U.S. at 86 (internal citation omitted).

"It is not enough that an appellant could have launched his attack upon the validity of the statute itself as applied; if he has failed to do so we are without jurisdiction over the appeal." *Beeler*, 315 U.S. at 651. Here, because Petitioner failed to raise or brief the due process claim on appeal below as required by Rule 13(b) of the Tennessee Rules of Appellate Procedure, the Court of Appeals of Tennessee did not address the due process claim.

Only where a state's rules do not afford reasonable opportunity of a hearing or where the rules were applied in a discriminatory manner to evade the claim has this Court entertained a federal claim not raised or addressed below. *See, e.g., Central Union Tel. Co. v. Edwardsville*, 269 U.S. 190, 194-195 (1925); *Hartford Life Ins. Co. v. Johnson*, 249 U.S. 490, 493 (1919). No such allegation has been made here. Therefore, Petitioner's due process claim is not properly before this court.

III.

THE STATE COURTS BELOW PROPERLY INTERPRETED THE STATE STATUTES AT ISSUE.

Should this Court decide to exercise its jurisdiction over this matter, Respondent asserts that the courts of Tennessee have properly interpreted the statutes at issue, according to the plain meaning of the statutes, to the legislative purpose of the statutes and to the public policy of maintaining consistency within the criminal code of Tennessee.

A. The interpretation of the reimbursement provision offered by the Court of Appeals of Tennessee meets the legislative purposes of Tenn. Code Ann. § 55-10-403 and of the rest of Tennessee's DUI enforcement scheme.

1. The reimbursement provision prevents the shifting of incarceration costs to the counties, which is barred by the Tennessee Constitution.

The Tennessee Constitution states, "No law of general application shall impose increased expenditure requirements on cities and counties unless the General Assembly shall provide that the state shall share the cost." Tenn. Const. art. II, § 24. In 1982, the General Assembly of Tennessee passed a sweeping overhaul of the state's DUI penalties law. *See* 1982 Tenn. Pub. Acts 891. In addition to a new requirement of mandatory jail time for all DUI offenders, the act required that the sheriff be reimbursed for the cost of these incarcerations.

This reimbursement provision was included to prevent an unconstitutional shifting of all expenses related to the mandatory jail sentences to the counties. *See Morris v. Snodgrass*, 886 S.W.2d 761, 762-63 (Tenn. App. 1994) (holding that statutory requirement of reimbursement to sheriff fulfills state's constitutional duty to share the expenses of mandatory DUI incarceration). Therefore, the Knox County clerk's imposition of jailers' fees upon Petitioner avoids the constitutional mischief that the General Assembly sought to prevent when it included the reimbursement provision.

2. Granting a benefit to DUI offenders that is not shared by other misdemeanants is contrary to the intent of the Tennessee legislature to treat DUI offenders more harshly than other misdemeanants.

Petitioner has mistaken what was intended to be a cost-shifting mechanism for government entities to be a special benefit granted to DUI offenders. The total penalty imposed upon Petitioner included the same items assessed against any other similarly situated misdemeanant — both a statutory fine and a jailers' fee. As a comparison of the penalties and pre-trial diversion available to other misdemeanants demonstrates, DUI offenders are subject to stiffer penalties than other misdemeanants. For example, the fines for other misdemeanants are generally lower than that of DUI offenders. *Cf.* Tenn. Code Ann. § 40-35-111 *with* § 55-10-403. In addition, pretrial diversion is not available to DUI offenders. Tenn. Code Ann. § 40-15-105(a)(1)(B)(i)(*c*) (1997 & Supp. 2000). "This exceptional treatment of DUI cases clearly manifests a legislative policy treating DUI offenses more seriously than other misdemeanors." *Daniels v. Alcoa*, 732 F. Supp. 1467, 1473 n.6 (E.D. Tenn. 1989). This legislative purpose would not be met if Petitioner's fine had been reduced by the amount of her jailers' fee.

B. The interpretation of Tenn. Code Ann. §§ 55-10-403 and 8-20-106 offered by the state courts is consistent with the rest of the state criminal code.

DUI is a Class A misdemeanor in Tennessee. Tenn. Code Ann. § 55-10-403(m). Class A misdemeanants may be subject to fines, imprisonment or both. Tenn. Code Ann.

§ 40-35-111(e)(1). The county legislative body may fix the amount of jailers' fees applied to misdemeanants. Tenn. Code Ann. § 8-26-105. Nothing within the Tennessee Code provides that the amount of misdemeanants' fine is somehow altered by the amount of the jailers' fees charged to offenders.

Plaintiff suggests that her fine should be lowered by the amount of her jailers' fee. If the legislature had intended for DUI offenders to receive a benefit to which other misdemeanants do not have access, the DUI statute would reflect this choice. Nothing in the Tennessee Code requires that DUI misdemeanants not be charged a jailers' fee, as are all similarly situated misdemeanants. Therefore, the interpretation of Tenn. Code Ann. § 55-10-403 offered by the state courts is consistent with the rest of Tennessee's criminal code and does not offend the United States Constitution.

C. The plain meaning of Tenn. Code Ann. § 55-10-403(a)(2) requires only that sheriffs are reimbursed with some portion of the monies collected from DUI offenders and does not implicitly repeal the jailers' fee statute as it applies to DUI offenders.

The provision at issue here states, "A portion of any fine imposed upon a person *for* a violation of this section, up to the maximum fine actually imposed, shall be returned to the sheriff. . . ." Tenn. Code Ann. § 55-10-403(a)(2) (1993 & Supp. 2000) (emphasis added). In accord with the plain language of this statute, the Knox County clerk returned to the sheriff a portion of the total penalty imposed upon Plaintiff *for* her DUI offense.

As this Court has noted, "the purpose of a statute includes not only what it sets out to change, but also what it resolves to leave alone." *West Virginia University Hospitals v. Casey*, 499 U.S. 83, 98 (1991). Here, the Tennessee General Assembly acted to ensure that sheriffs are reimbursed for the cost of incarcerating DUI offenders for constitutional reasons. However, contrary to Petitioner's assertion, the legislature did not implicitly repeal Tenn. Code Ann. § 8-26-105 (1993), the jailers' fee statute, as it applies to DUI offenders.

"It is, of course, a cardinal principle of statutory construction that repeals by implication are not favored." *United States v. United Continental Tuna Corp.*, 425 U.S. 164, 168 (1976). However, that is exactly what Petitioner asks of this Court. Here, the Tennessee General Assembly did not choose language that would have required the county clerk to reduce the amount of DUI offenders' fines by the amount of the applicable jailers' fees. The legislature did not even imply this result, by using such language as "a portion of any fine imposed . . . *under* this section. . . ." In the absence of any statutory language instructing county clerks to stop collecting jailers' fees for Class A misdemeanants who are DUI offenders, the practice has lawfully and constitutionally continued.

Petitioner's reliance upon a poorly drafted opinion of the state attorney general that ignored state appellate court precedent on this issue is misplaced. "This Court's case law makes clear that we are not to give the [state] Attorney General's interpretative views controlling weight." *Stenberg v. Carhart*, 530 U.S. 914, 940 (2000) (finding a Nebraska state law to be unconstitutional, contrary to the opinion of the state attorney general).

Additionally, the cited attorney general opinion failed to acknowledge the Court of Appeals of Tennessee decision interpreting the reimbursement provision. *See Knox County v. City of Knoxville*, 1988 WL 116456 (Tenn. Ct. App. Nov. 2, 1988). While this opinion was unreported, Tennessee courts consider such decisions to be persuasive authority. Tenn. R. Sup. Ct. 4(H)(1) (2000); *see also Allstate Ins. Co. v. Watts*, 811 S.W.2d 883, 886 n.2 (Tenn. 1991) (citing an unpublished case despite "the general rule that unpublished opinions should not be cited in published opinions."). Petitioner's constitutional argument that she had no notice of the additional seventy-seven dollar ($77) jailers' fee that was part of her criminal penalty ignores the existence of this case law and the plain language of the jailers' fee statute.

CONCLUSION

For the foregoing reasons, the Petition for Certiorari should be denied.

Respectfully submitted,

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APPENDIX

APPENDIX — RELEVANT DOCUMENTS

IN THE
TENNESSEE COURT OF APPEALS

Case No. E1999-01185-COA-R3-CV

JULI BROWN, et al on behalf of herself and all others similarly situated,

Plaintiff-Appellant,

vs.

KNOX COUNTY and LILLIAN BEAN,

Defendant-Appellee.

On Appeal from the Knox County Chancery Court Trial Court Number: 142569-2

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ORAL ARGUMENT REQUESTED

Appendix

ISSUE PRESENTED FOR REVIEW

Whether the chancery court erroneously interpreted T.C.A. § 55-10-403 (a) (2) when it disagreed with a Tennessee Attorney General's opinion holding that this statute requires clerks of court to reduce jail fees imposed on persons convicted of violating Tennessee's DUI statute by the amount of any fine imposed.

Appendix

IN THE
TENNESSEE COURT OF APPEALS

Case No. _____

JULI BROWN, et al on behalf of herself and all others similarly situated,

Plaintiff-Appellant,

vs.

KNOX COUNTY and LILLIAN BEAN,

Defendant-Appellee.

On Appeal from the Tennessee Court of Appeals
Number: E1999-01185-COA-R3-CV

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ORAL ARGUMENT REQUESTED

Appendix

ISSUE PRESENTED FOR REVIEW

Whether the lower courts can ignore the plain meaning of a criminal statute in order to construe the statute against the defendant and in favor of the state.